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John

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,342	09/02/2003	Kenji Shimoyama	990342A	1627
38834	7590	04/19/2005		EXAMINER
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP				DIAZ, JOSE R
1250 CONNECTICUT AVENUE, NW				
SUITE 700			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20036			2815	

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/652,342	SHIMOYAMA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	José R. Diaz	2815	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 January 2005.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 16-23 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 16-20,22 and 23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. 09274767.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 16-20 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsang (US Pat. No. 4,622,673) in view of Fukagi (US Pat. No. 5,530,713).

Regarding claims 16, 20, 22 and 23, Tsang teaches a method of manufacturing semiconductor light-emitting device comprising the steps of:

growing a compound semiconductor epitaxial layer (3, 5, 7) including an active layer (5) on a substrate (1) (see fig. 1);

forming a protective film (9) having an opening on a surface of the compound semiconductor epitaxial layer (3, 5, 7) (see fig. 1); and

selectively growing a ridge-shaped compound semiconductor epitaxial layer (11) to cover the opening (see fig. 1).

However, Tsang fails to teach the limitation of a substrate having a surface having an off-angle of 0.5° to 30° to a crystallographic plane of (100), (111) or (0001).

Fukagi teaches that it is well known in the art to include a GaAs substrate (e.g. a zinc-blende structure) having a surface having an off-angle of 0.5° to 1° to a crystallographic plane of (100) (see col. 4, lines 8-10), and a compound semiconductor layer (layers 2-8) including cladding (3 and 7) and active (5) layers, wherein the compound semiconductor layer comprises AlGaAs (see layers 3-4 and 6-7) (see col. 14, lines 5-29).

Tsang and Fukagi are analogous art because they are from the same field of endeavor as applicant's invention. At the time of the invention it would have been obvious to a person of ordinary skill in the art to include a substrate having a surface having an off-angle of 0.5° to 1° to a crystallographic plane of (100), and a compound semiconductor epitaxial layer including an active layer and a cladding layer comprising AlGaAs material. The motivation for doing so, as is taught by Fukagi, is improving the driving current increasing rate (col. 15, lines 20-21). Therefore, it would have been obvious to combine Fukagi with Tsang to obtain the invention of claims 16-20 and 22.

Regarding claim 17, Tsang teaches that the compound semiconductor epitaxial layers including an active layer (15) further include a first conductivity type cladding

layer (3) and a second conductivity type first cladding layer (7) (see fig. 1 and col. 4, lines 41-42).

Regarding claim 18, Tsang teaches that the ridge-shaped compound semiconductor epitaxial layer (11) includes a second conductivity type second cladding layer (consider the fact that the layer 11 is an epitaxial layer grown from the cladding layer 7 (col. 4, lines 19-20 and 23-26), which has a second conductivity type (i.e. p-type) (col. 4, lines 41-42)).

Regarding claim 19, Tsang teaches that the second conductivity type second cladding layer (11) is grown as to cover a portion of a surface of the protective film (9) (see fig. 1).

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 16-20 and 22-23 have been considered but are moot in view of the new ground of rejection.

#### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Art Unit: 2815

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

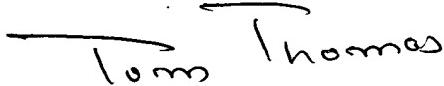
***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José R. Díaz whose telephone number is (571) 272-1727. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Thomas can be reached on (571) 272-1664. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRD  
4/14/05

  
Tom Thomas  
PAK - JEMAS  
SUPERVISORY PATENT EXAMINER